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No. 85-782

Supreme Court, U.S.

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In the Supreme Court of the United States

OCTOBER TERM, 1985

IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER

v.

LUZ MARINA CARDOZA-FONSECA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT*

REPLY MEMORANDUM FOR THE PETITIONER

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Respondent concedes (Br. in Opp. 5) that there is a conflict in the circuits on the question presented in this case, and she devotes the bulk of her brief in opposition (at 7-15) to arguments on the merits, which are adequately addressed in our petition (at 9-19). We respond here to respondent's suggestion (Br. in Opp. 5-7) that the Court should not grant review because the court of appeals remanded the case to the Board of Immigration Appeals for further proceedings. For a number of reasons, this argument is completely meritless.

In the first place, the question presented—whether 8 U.S.C. 1158(a) makes an alien eligible for asylum on a lesser showing of persecution than is necessary to obtain withholding of deportation under 8 U.S.C. 1253(h)—is purely one of law. The Court's consideration of the question therefore would not benefit from further factual development in

this case. As we discussed in the petition (at 15-18), the Board exhaustively considered the appropriate burden of proof for asylum applicants in *In re Acosta-Solorzano*, Interim Dec. No. 2986 (Mar. 1, 1985) (Pet. App. 29a-68a). Further discussion of the issue by the Board is unnecessary.

Moreover, contrary to respondent's assertion (Br. in Opp. 7), this may well be the Court's only opportunity to review the court of appeals' decision in this case. If the Board on remand were to grant respondent relief, we would not be able to seek judicial review of that decision. We note as well that the Court granted review in *INS v. Stevic*, No. 82-973 (June 5, 1984), which was in the identical procedural posture as this case.

Finally, the conflict in the circuits requires expeditious resolution. Several thousand aliens file asylum applications each year (see Pet. 19 n.10). The Board, the Immigration and Naturalization Service, and these aliens have a strong interest in the Court's definitive clarification of the appropriate standard that should be applied in asylum proceedings. Without a decision by this Court, the Board would be forced to apply different standards in cases subject to review in different circuits, and it would not know what standard to apply in those circuits that have not yet addressed the issue.

For the foregoing reasons and those stated in the petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

CHARLES FRIED
Solicitor General

JANUARY 1986